IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.849 OF 1999

IN

WRIT PETITION NO.2465 OF 1998

National Textile Corporation
(South Maharashtra) Ltd. & another. ...Appellants.

vs.

1A Smt.Laxmidevi G. Sanadhya & ors. ...Respondents.

Mrs.Meena H. Doshi, for Appellants.

None for Respondents.

CORAM: D.K.DESHMUKH &
J.H.BHATIA, JJ.

DATED: 3rd July,2007.

P.C.:-

1. By this appeal, the appellants challenge the order passed by the learned Single Judge dated 27.1.1999 in Writ Petition no.2465 of 1998. By that order, the Court has declined to

interfere in its extra ordinary jurisdiction under Article 226 of the Constitution of India with the order made by the Industrial Court dated 16.7.1998 passed in Complaint (ULP) No.1491 of 1988. By that order the Industrial Court directed the appellants to pay full back wages with consequential benefits to the complainant as if he has retired on attaining the age of 60 years. The original complainant whose legal representatives have been brought on record of this appeal, because of his death, had claimed that he was wrongly retired at the age of 58 years. The question that was decided by the Industrial Court was “what was the age of retirement of the complainant”. The stand of the petitioner was that because the complainant was the member of the technical staff and his salary was in excess of Rs.500/- at the time of his appointment, he was not an employee within the meaning of Bombay Industrial Relations Act and therefore, his conditions of service were not

governed by the model standing order. The Industrial Court, however, in paragraph 12 of its order has observed thus:-

> "It is not in dispute that the service conditions of the Complainant are governed by the Model standing Orders. As per the Model Standing Orders the employee in supervisory and technical category, has to be retired at the age of 60 years."

It is common ground that unless the provisions of the Bombay Industrial Relations Act are applicable, in other words unless the complainant is an employee within the meaning of the Bombay Industrial Relations Act, his conditions of service will not be governed by the Model Standing Order. When the appellant conceded before the Industrial Court that the conditions of service of the complainant were governed by the Model Standing order, the appellant also conceded that the conditions of service of the plaintiff were governed by the Bombay Industrial Relations Act. The learned Counsel appearing for

appellants contended that such concession which has been recorded in paragraph 12 of the order was never made by the appellants before the Industrial Court. She contended that ground to that effect was also raised in the writ petition that was filed challenging the order of the Industrial Court. In our opinion, however, if according to the appellants, its concession was wrongly recorded by the Industrial Court, the remedy of the appellants was to approach the same Court for correction of the order and not by challenging the finding in the Writ petition. Admittedly, the appellants have not adopted the remedy that was available to them under the law. Therefore, the appellants cannot be heard to say that the concession has been wrongly recorded.

2. What is further to be seen is that the consequence of the order is that monetory benefits have been granted to the employee who has worked upto the age of 58 years. That

employee is presently no more, his legal representatives have been brought on record. The learned Single Judge of this Court has declined to interfere with the order in its extra ordinary jurisdiction under Article 226 of the Constitution of India. In our opinion, considering that the jurisdiction of the High Court under Article 226 of the Constitution of India is a discretionary jurisdiction and the learned Single Judge in exercise of that discretion has decided not to interfere with the order challenged in the writ petition, and also considering that the order of the Industrial Court really turns on the concession made before it and also considering that presently the employee is no more and it is a question of payment of monetory benefit only, in our opinion, it will not be appropriate for us to interfere with the order in our jurisdiction under the Letters Patent because we find that the order of the Industrial Court has not resulted in failure

of justice. Appeal is disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA,J.)